



INTERIOR BOARD OF INDIAN APPEALS

S & H Concrete Construction, Inc. v. Acting Phoenix Area Director,
Bureau of Indian Affairs

19 IBIA 69 (11/15/1990)

Related Board case:
20 IBIA 176



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

S & H CONCRETE CONSTRUCTION, INC.

v.

ACTING PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-94-A

Decided November 15, 1990

Appeal from a denial of a loan application under the Indian Revolving Loan Program.

Vacated and remanded.

1. Administrative Procedure: Administrative Record--Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions--Indians: Financial Matters: Financial Assistance

Where a Bureau of Indian Affairs Area Director denies an application for a loan under the Indian Revolving Loan Fund on the grounds that the financial condition of the applicant is inadequate to provide a reasonable prospect of repayment, the administrative record should show how the Area Director reached his conclusions concerning the applicant's financial condition.

APPEARANCES: Arlette M. Hall, appellant's president, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant S & H Concrete Construction, Inc., seeks review of a March 30, 1990, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), denying its application for a direct loan under the Indian Revolving Loan Program. For the reasons discussed below, the Board vacates the Area Director's decision and remands this case to him for further proceedings.

Background

Appellant was incorporated under Arizona law on August 19, 1988. Its president, Arlette Hall, is an enrolled member of the Cheyenne River Sioux Tribe. In early 1990, appellant applied for a direct loan in the amount of \$150,000, apparently for the purpose of providing working capital. ^{1/} After

^{1/} The administrative record in this case consists in its entirety of a spiral bound document titled "A Loan Proposal for S & H Concrete Construction, Inc.," dated February 1990. This document was apparently prepared

discussions with BIA staff, appellant revised its proposal in a manner that resulted in the reduction of its loan request to \$110,000.

By letter of March 30, 1990, the Area Director denied appellant's request, stating:

The main reasons for this disapproval consist of the following:

1. Negative net worth
2. Cash flow projected has little room for error
3. 20% equity hasn't and apparently cannot be met

In reaching this determination, we had credit personnel from the Central Office review your package here prior to making a decision on your loan. We have taken their advice in making our final decision in declining your loan application.

Section 103 of Public Law 93-262 [25 U.S.C. § 1463 (1988)] states the following:

"Loans may be made only when in the judgment of the Secretary, there is a reasonable prospect of repayment and only to applicants who in the opinion of the Secretary are unable to obtain financing from other sources on reasonable terms and conditions."

This is an Action by the Area Director and can be appealed under 25 CFR
2. A copy is enclosed for your ready reference.

Appellant filed a notice of appeal and statement of reasons with the Area Director, who forwarded them to the Board. They were received by the Board on May 15, 1990.

Appellant's notice of appeal should have been filed with the Board rather than the Area Director. However, appellant's error was caused by the incorrect appeal information given in the Area Director's decision. The Board therefore accepted the appeal. No further briefs were filed with the Board.

Discussion and Conclusions

Decisions concerning whether or not to approve a loan under the Indian Revolving Loan Program are decisions based on the exercise of discretion. Cochran v. Acting Billings Area Director, 18 IBIA 406 (1990); Hamilton v. Acting Anadarko Area Director, 17 IBIA 152 (1989). In reviewing such discretionary decisions, the Board does not substitute its judgment for that

fn. 1 (continued)

to support appellant's formal loan application, which is missing from the record.

of BIA. However, the Board does have a responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion. See, e.g., Aubertin Logging & Lumber Enterprises v. Acting Portland Area Director, 18 IBIA 307 (1990).

Appellant's loan proposal includes balance sheets showing that, as of December 31, 1989, it had a negative net worth. In its statement of reasons, however, appellant states that it submitted a March 6, 1990, amendment to its application showing that the Halls had personally assumed a \$31,900 note to the former stockholders, thereby making appellant's net worth positive.

[1] The Board is unable to tell from the materials before it whether the Area Director considered appellant's amended application. Further, the record contains no analyses whatsoever of appellant's application. The decision itself simply states conclusions without discussion.

The decision and the administrative record for an appeal, read together, should be sufficient to show how BIA reached its conclusions. Further, where a requirement is stated, such as the "20% equity" requirement noted in this case, which does not appear in the regulations governing the program, an explanation of the source of the requirement should appear in the record. 2/

Where the administrative record does not support BIA's decision, the case must be remanded for development of an adequate record. Plain Feather v. Acting Billings Area Director, 18 IBIA 26 (1989). This is true even where the decision is based on the exercise of discretion. Ross v. Acting Muskogee Area Director, 18 IBIA 31 (1989). In accordance with these principles, this case must be remanded for development of an adequate record and issuance of a new decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Phoenix Area Director's March 30, 1990, decision is vacated, and this case is remanded to him for further proceedings as discussed in this opinion.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge

2/ The Indian Revolving Loan Program is governed by 25 CFR Part 101. The Board is unable to find a "20% equity" requirement in those regulations.